IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3047 of 2001
with
CIVIL APPLICATION NO. 7151 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DULERA SAKALCHAND GANDHI
Versus
P K MISHRA OR HIS SUCCESSOR IN OFFICE SECRETARY

Appearance:
1. Special Civil Application No. 3047 of 2001
MR MITUL K SHELAT for Petitioner No. 1-3
GOVERNMENT PLEADER for Respondent No. 1
RULE SERVED for Respondent No. 2-4

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 11/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

1. The petitioners have approached this Court for direction to the Land Acquisition Officer to determine and tender the amount of mesne profit/rent calculated at the rate of 5% of the market value of the land as on the date of the acquisition proceedings with interest for delayed payment at the rate of 21% p.a. from the date of the dispossession till the date of payment.

2. It appears that the petitioners earlier filed Special Civil Application No. 2105/98 which was decided by the Division Bench of this Court on 6.5.98. It was pointed out to the Division Bench hearing the matter that some lands of village Kotarpur comprising of survey nos. 65 & 66 were acquired for the purpose of National Highway leading to Aerodrome. The aggregate extent of land acquired was 9613 sq.mtrs., but while taking the possession of the land by the authorities, it was found that the possession of the land to the extent of 13875 sq.mtrs. has been taken and thus land admeasuring about 4262 sq.mtrs. was in excess which was not acquired yet possession was taken without issuing notification under Sec. 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) or following any other procedure. Before the Division Bench earlier, prayer was also made that the respondents be directed to restore possession of the land admeasuring 4262 sq.mtrs. or they may be directed to initiate proceedings under the Act. It appears that the State fairly stated that a fresh proposal for acquiring land to the extent of 4262 sq.mtrs. of land is being made and within a short time, formalities will be completed for acquisition of the land. It appears that the counsel for the petitioners drew the attention of the Court to the guidelines issued by the Government to be followed in the case of acquisition of land which is in excess. It was pointed out that 5% of market value of the land be paid by way of mesne profit. Without entertaining the entitlement, the Court simply directed that the petitioners will be at liberty to make an application before the authorities seeking relief in respect of the land which was under the unauthorized occupation of the Government. Certain time limit was specified and hence an application was preferred and the order was also modified (Misc.Civil Application no. 2881/98 decided on 7.4.99) and the time limit mentioned was deleted for making the application and the applicants were at liberty to submit an application as and when the authorities would take action for acquiring the land. It seems that thereafter further

proceedings were also initiated including contempt of proceedings. Misc. Civil Application No. 1114/99 was heard and decided by the Division Bench (Coram : R.K.Abichandani and D.H.Waghela, JJ) on 15.10.99 directing to complete the proceedings within a period of six months. It appears that thereafter on 17.11.99, the Executive Engineer (R&B), Ahmedabad vide Annexure `H' intimated the petitioners that for mesne profit the market rate was to be fixed by the Dy.Town Planner and on that basis, the amount of Rs.18,436/- is required to be paid. It is required to be noted that it was not towards full and final payment but it was an interim payment. Even thereafter, another application for contempt was filed being Misc.Civil Application No. 2480/99 and the Division Bench (Coram : K.R.Vyas and C.K.Buch, JJ) on 24.7.00 held as under :

" We are of the view that there is no wilful disobedience on the part of the respondents in complying with the order passed by this Court. It at all the applicants have any grievance regarding the calculations of mesne profit by the respondents and the compensation, the same can be challenged in an appropriate proceeding. The respondents shall deposit the amount of compensation of Rs. 13,42,088/- and the amount of mesne profit of Rs. 18,436/- in this court within a week from today. On such amount being deposited, the office shall make payment by issuing cheques in the names of the concerned petitioners. Subject to these directions, rejected."

Thus, the Division Bench hearing the matter was also of the view that the petitioners will have to initiate appropriate proceedings for arriving at the figure.

Learned Advocate Mr.Shelat drew our attention to the decision of this High Court in Special Civil Application no. 2156/00 decided on 17.4.00 with a view to canvas that there is no need to go to the appropriate authority or Reference Court and this Court can direct to make payment of interest. In para 5 of the said judgment, the Court pointed out as under :

" Similar question had arisen before this Court in the case of Mohanbhai Punambhai Patel V/S State of Gujarat reported in 1999(2)G.L.H. 331, wherein the Division Bench of this Court has taken view that in cases where compensation is not paid or deposited on or before taking

possession of the land, the Collector shall pay the amount awarded with interest. If such amount or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of 15% per annum is payable from the date of expiry of the period of one year. Admittedly, in the award, no amount of interest under Section 34 of the Act is paid. Another Division Bench (Coram : M.R.Calla and Pradip Kumar Sarkar, JJ) has also taken similar view in Special Civil Application No. 8612 of 1999."

In para 6, the Court pointed out that there was no reply in the petition and the learned A.G.P. only orally contested the petition and the order was made by the Court.

In the instant case, what we find from the Land Acquisition Officer's award is relevant aspect to be taken into consideration. The award is annexed as Annexure `A' to the Civil Application at page 7. So far as the payment of interest is concerned, in Clause-14, the Special Land Acquisition Officer has observed as under : (when translated)

"The lands acquired were taken in possession by the acquiring body privately and as per the direction of the High Court in Special Civil Application, the acquiring body has taken the decision for the mesne profit for the use of the lands in question. Therefore, the amount of interest or rate is to be paid directly."

It is to be noted that after this award, the Division Bench passed the order in Misc. Civil Application No. 2480/99 on 24.7.00 clearly pointing out that if at all the applicants have any grievance regarding the calculating of mesne profit by the respondents and the compensation, the same can be challenged in an appropriate proceedings, meaning thereby, in our opinion the Division Bench earlier directed the petitioners to take recourse to the proceedings under the Land Acquisition Act. It is also admitted that the reference is pending before the Reference Court. If the prayer with regard to the interest or amount of mesne profit is not made, it would be open for the petitioners, in view of the special facts and circumstances, to make a request to the Reference Court to decide the same. However, the application shall be made within a fortnight from today. With these observations, the petition stands disposed of.

Rule discharged. No order as to cost. Civil Application rejected.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

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